

**IN THE CIRCUIT COURT OF BUTLER COUNTY, MISSOURI  
THIRTY-SIXTH JUDICIAL CIRCUIT**

FCCI INSURANCE COMPANY as assignee of	)	Cause No. _____
G&G Farms, Murphy Grain LLC and G&G	)	
Murphy LLC,	)	
	)	
Plaintiff,	)	
	)	Division No. _____
v.	)	
	)	
DEERE & COMPANY d/b/a JOHN DEERE	)	
Serve via Sheriff on:	)	
Registered Agent	)	
Edward R. Berk	)	
One John Deere Place	)	
Moline, IL 61265	)	
	)	
MCCOY CONSTRUCTION & FORESTRY, INC.	)	
Serve via Sheriff on:	)	
Registered Agent	)	
Julie Gower	)	
200 Erb Industrial Drive	)	
Fenton, MO 63026	)	
	)	
Defendants.	)	

# PETITION

NOW COMES Plaintiff, FCCI Insurance Company as assignee of G&G Farms, G&G Murphy LLC (collectively, “G&G Farms”), and Murphy Grain LLC, by and through its counsel, Cozen O’Connor, and for its Petition against Defendants Deere & Company d/b/a John Deere and McCoy Construction & Forestry, Inc., alleges as follows:

## PARTIES

1. Plaintiff, FCCI Insurance Company (“FCCI” or “Plaintiff”) is a corporation organized and existing under the laws of the State of Florida, with its principal place of business

located at 6300 University Parkway, Sarasota, Florida 34240, which is authorized to issue insurance policies in the State of Missouri. FCCI provided insurance coverage under a policy issued to G&G Farms against loss and damage to 43315 State Highway 25, Malden, Missouri 63863, including personal property, machinery and equipment, as more fully set forth in the terms and provisions of said policy.

2. At all times relevant, Defendant, Deere & Company (“Deere”), was a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at One John Deere Place, Moline, Illinois 61265 that was engaged in the business of manufacturing and selling heavy equipment, such as excavators, under the assumed name John Deere Company.

3. At all times relevant, Defendant, McCoy Construction & Forestry, Inc. (“McCoy”), was a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located at 2099 Southpark Court, Dubuque, IA 52003 that was engaged in the business of selling and servicing heavy equipment such as John Deere Excavators.

### **JURISDICTION AND VENUE**

4. This court has personal jurisdiction over Defendants in this matter as Defendants caused injury in the State of Missouri and have had systematic and continuous contact with the State of Missouri and Butler County.

5. Plaintiff seeks damages that are in excess of \$100,000.

6. This venue is proper because all or a substantial part of the events, acts, and transactions giving rise to this claim occurred in Butler County, Missouri.

### **FACTUAL ALLEGATIONS**

7. On February 1, 2023, Murphy Grain LLC (“Murphy Grain”) purchased a 2022 John Deere 210G LC FT4 Excavator, VIN 1FF210GXHNF530813, (the “Subject Excavator”) from McCoy. (A true and accurate copy of the Purchase Order for the Subject Excavator is attached hereto as Exhibit A).

8. The Subject Excavator was designed, manufactured, sold and/or distributed into the stream of commerce by Deere.

9. On a date prior to October 16, 2023, Plaintiff issued a policy of insurance to its insured that was in effect on October 16, 2023 whereby Plaintiff provided property insurance coverage for the Subject Excavator.

10. The policy of insurance provided property insurance in the event of damage to the Subject Excavator.

11. On October 16, 2023, while using the Subject Excavator in a field near the intersection of County Road 559 and B Street in Poplar Bluff, Missouri, a hydraulic hose and/or fitting of the Subject Excavator failed, causing hydraulic fluid to come into contact with a hot surface on the Subject Excavator, which caused the Subject Excavator to suddenly and without warning ignite and catch fire (the “Fire”).

12. At all times the Subject Excavator was used as it was reasonably anticipated by Defendants.

13. As a result of the fire, G&G Farms made a property insurance claim with Plaintiff for costs associated with the fire damage to the Subject Excavator, and Plaintiff paid G&G Farms \$253,000.00.

14. G&G Farms and Murphy Grain assigned all of their claims and/or legal title to all causes of action arising from the Fire to Plaintiff, including the right to pursue this action.

**COUNT I**  
**BREACH OF EXPRESS AND IMPLIED WARRANTIES**  
**DIRECTED AGAINST DEERE & COMPANY**

15. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs one (1) through fourteen (14) above, as though fully set forth herein at length.

16. The Subject Excavator was designed, manufactured, sold and/or distributed into the stream of commerce by Deere in the regular course of business and was expected to and did reach Murphy Grain without substantial change in the condition in which it was manufactured.

17. Deere expressly and impliedly represented and warranted that the Subject Excavator was safe for use by the general public, merchantable, and fit for the particular purpose for which it was intended.

18. The Subject Excavator did not comply or conform with the representations and was in breach of the express and implied warranties made by Deere in that it was defective, negligently manufactured, and in an unsafe condition.

19. As a direct and proximate result of the breach of the aforementioned implied warranties, the Subject Excavator ignited a fire, and the Plaintiff sustained damages in an amount in excess of Two Hundred and Fifty-three Thousand Dollars (\$253,000.00), exclusive of interest and costs, for which Deere is legally liable.

WHEREFORE, the Plaintiff, FCCI Insurance Company as assignee of G&G Farms and Murphy Grain respectfully prays for judgment in its favor against Defendant, Deere & Company, in an amount in excess of Two Hundred and Fifty-three Thousand Dollars (\$253,000.00), together with interest and costs, and for all further and proper relief.

**COUNT II**  
**BREACH OF EXPRESS/IMPLIED WARRANTIES**  
**DIRECTED AGAINST MCCOY CONSTRUCTION & FORESTRY, INC.**

20. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs one (1) through fourteen (14) above, as though fully set forth herein at length.

21. The Subject Excavator was designed, manufactured, sold and/or distributed into the stream of commerce by McCoy in the regular course of business and was expected to and did reach Murphy Grain without substantial change in the condition in which it was manufactured.

22. McCoy expressly and impliedly represented and warranted that the Subject Excavator was safe for use by the general public, merchantable, and fit for the particular purpose for which it was intended.

23. The Subject Excavator did not comply or conform with the representations and was in breach of the express and implied warranties made by McCoy in that it was defective, negligently manufactured, and in an unsafe condition.

24. As a direct and proximate result of the breach of the aforementioned implied warranties, the Subject Excavator ignited a fire, and the Plaintiff sustained damages in an amount in excess of Two Hundred and Fifty-three Thousand Dollars (\$253,000.00), exclusive of interest and costs, for which McCoy is legally liable.

WHEREFORE, the Plaintiff, FCCI Insurance Company as assignee of G&G Farms and Murphy Grain respectfully prays for judgment in its favor against Defendant, McCoy Construction & Forestry, Inc., in an amount in excess of Two Hundred and Fifty-three Thousand Dollars (\$253,000.00), together with interest and costs, and for all further and proper relief.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all issues triable by a jury.

Date: January 29, 2024

Respectfully submitted,

FCCI INSURANCE COMPANY,

By: /s/ Marisa L. Saber

One of Plaintiffs' Attorneys

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